

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
MASON COUNTY TO N. E. FRINT)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and)
SLADE GORTON, ATTORNEY GENERAL,)
Appellants,)
v.)
MASON COUNTY and N. E. FRINT,)
Respondents.)

SHB No. 128

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

This matter was brought before the Shorelines Hearings Board, Chris Smith, Chairman, W. A. Gissberg, Walt Woodward, Gerald D. Probst, Robert F. Hintz, and Robert E. Beaty on September 23, 1975 at the Board's office in Lacey, Washington.

Appellants, Department of Ecology and Slade Gorton, Attorney General, were represented by Robert V. Jensen, Assistant Attorney General; respondent, N. E. Frint, was represented by his attorney, Robert N. Gates,

EXHIBIT A

1 Jr. N. E. Frint also represented the Port of Hoodspport. Respondent,
2 Mason County, having been sent appropriate notice, made no appearance.
3 Olympia court reporter, Eugene E. Barker, recorded the proceeding.

4 Having heard the testimony, having examined the exhibits, and having
5 heard the arguments of counsel, the Board makes the following

6 FINDINGS OF FACT

7 I.

8 A substantial development permit for the construction of a "bulkhead
9 and fill for a recreational area" was issued to respondent by Mason County
10 on January 7, 1974. A copy of the permit with attached documents was filed
11 with appellants who thereafter timely filed their requests for review.

12 II.

13 Respondent is the contract purchaser of all the tidelands and uplands
14 upon which the proposed substantial development is to be constructed. The
15 subject property is located in Hoodspport and on a shoreline of state-wide
16 significance under the Shoreline Management Act of 1971 (SMA).

17 III.

18 The proposed development involves the filling of the existing tide-
19 lands with approximately 5,500 cubic yards of sand and gravel. A bulkhead
20 surrounding the fill would also be constructed. The end result would be
21 an area about 350 feet by 80 feet. Respondent is, in effect, creating
22 land.

23 IV.

24 Both the northern and southern boundaries of respondent's property
25 have bulkheads. Both sides are also developed. Highway 101 borders
26 respondent's western boundary. The water covering respondent's gently

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1 sloping tidelands is relatively shallow and is in close proximity to a
2 state fish hatchery.

3 V.

4 Respondent's property is of such a configuration and location that
5 juveniles of several species of salmon and trout are expected to pass
6 during their period of migration. Trout would also return by the same
7 route.

8 Five species of clams inhabit the tidelands and provide food for
9 other fish and fowl in the food chain. Oysters can also be found on the
10 tidelands. However, respondent's tidelands cannot be called a highly
11 productive shellfish bed.

12 Respondent's project would adversely affect the present resident
13 aquatic life because of loss of habitat. If properly constructed, the
14 State Departments of Fisheries and Game would have no objection to the
15 bulkhead and fill. The fill, however, would detrimentally alter natural
16 conditions characteristic of shorelines of state-wide significance and
17 convert a resource into an irreversible use.

18 VI.

19 No evidence of Mason County's master program was offered.

20 VII.

21 Respondent intends his development to be a parking lot. This is
22 respondent's reaction to the lack of parking space in the town and for
23 the customers at his adjacent restaurant. Respondent would allow
24 others to use the parking lot primarily because he cannot spare the time
25 necessary to keep these people away. Respondent's requirement is for the
26 total area allowed in the permit. He asserts that anything less would

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1 be uneconomical for him to construct.

2 VIII.

3 Any Conclusion of Law which should be deemed a Finding of Fact is
4 hereby adopted as such.

5 From these Findings the Shorelines Hearings Board comes to these

6 CONCLUSIONS OF LAW

7 I.

8 The Board has jurisdiction over the persons and over the subject
9 matter of this proceeding.

10 II.

11 Until the adoption of a master program, the validity of a substantial
12 development permit is tested for consistency against the policy of
13 RCW 90.58.020, the guidelines of the Department of Ecology, and the master
14 program being developed so far as can be ascertained. There was no
15 evidence of any master program for the area and time in question
16 presented by either party.

17 III.

18 RCW 90.58.020 states:

19 . . .
20 It is the policy of the state to provide for the management
21 of the shorelines of the state by planning for and fostering
22 all reasonable and appropriate uses. This policy is designed
23 to insure the development of these shorelines in a manner which,
24 while allowing for limited reduction of rights of the public in
25 the navigable waters, will promote and enhance the public
26 interest. This policy contemplates protecting against adverse
27 effects to the public health, the land and its vegetation and
28 and wildlife, and the waters of the state and their aquatic
29 life, while protecting generally public rights of navigation
30 and corollary rights incidental thereto.

31 . . .
32 In the implementation of this policy the public's
33 opportunity to enjoy the physical and aesthetic qualities of

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1 natural shorelines of the state shall be preserved to the
2 greatest extent feasible consistent with the overall best
3 interest of the state and the people generally. To this end
4 uses shall be preferred which are consistent with control of
5 pollution and prevention of damage to the natural environment,
6 or are unique to or dependent upon use of the state's shore-
7 line. Alterations of the natural condition of the shorelines
8 of the state, in those limited instances when authorized, shall
9 be given priority for single family residences, ports, shore-
line recreational uses including but not limited to parks,
marinas, piers, and other improvements facilitating public
access to shorelines of the state, industrial and commercial
developments which are particularly dependent on their location
on or use of the shorelines of the state and other development
that will provide an opportunity for substantial numbers of
the people to enjoy the shorelines of the state.

9

10 Most landfills whose purpose is to create land in the waters of
11 shorelines of state-wide significance and where no public interest is
12 promoted and enhanced are inconsistent with the policy of the Shoreline
13 Management Act. Having considered the evidence in this matter, we
14 conclude that no public interest is enhanced. Here, respondent serves
15 his own private interest. Although he does own the land, he does not
16 own or control the public's interest in the waters of the state. In
17 addition, a parking lot has but a low priority of use on the shorelines.
18 All things considered, the development, as presented, is inconsistent
19 with the policy of the SMA.

20 IV.

21 WAC 173-16-060(11)(e) provides that:

22 The construction of bulkheads should be permitted only where
23 they provide protection to upland areas or facilities, not for
24 the indirect purpose of creating land by filling behind the
bulkhead. Landfill operations should satisfy the guidelines
under WAC 173-16-060(14).

25 The evidence clearly shows that the only purpose of the landfill and
26 bulkhead is to create land upon which a parking lot will be constructed.

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1 The proposed project is inconsistent with the foregoing provision.

2 V.

3 WAC 173-16-060(14)(d) provides that:

4 Priority should be given to landfills for water-dependent uses
5 and for public uses. In evaluating fill projects and in
6 designating areas appropriate for fill, such factors as total
7 water surface reduction, navigation restriction, impediment to
8 water flow and circulation, reduction of water quality and
9 destruction of habitat should be considered.

10 The evidence shows that this particular project is a low priority,
11 non water-dependent use. Furthermore, we conclude that the development,
12 considering the size of the fill, the use to which it will be put, and
13 its location upon a shoreline of state-wide significance, is
14 inconsistent with the above guideline.

3 VI.

14 Appellants failed to plead or to prove any non-compliance with the
15 State Environmental Policy Act, chapter 43.21C RCW.

16 VII.

17 Any Finding of Fact which should be deemed a Conclusion of Law
18 is hereby adopted as such.

19 From these Conclusions, the Shorelines Hearings Board makes and
20 enters the following

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ORDER

The substantial development permit issued to N. E. Frint by Mason County should be, and hereby is, vacated in all respects.

DATED this 18th day of December, 1975.

SHORELINES HEARINGS BOARD

Chris Smith
CHRIS SMITH, Chairman

Robert E. Beatty
ROBERT E. BEATY, Member

W. A. Gissberg
W. A. GISSBERG, Member

Robert F. Hintz
ROBERT F. HINTZ, Member

Gerald D. Probst
GERALD D. PROBST, Member

Walt Woodward
WALT WOODWARD, Member

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